REMARKS

This is a full and timely response to the final Official Action mailed March 7, 2007. Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Claim Status:

Claims 21-29, 32-36 and 55-59 have been withdrawn under the imposition of a previous Restriction Requirement and cancelled without prejudice or disclaimer. Claims 1-20, 30-31, 37-40 were also cancelled previously without prejudice or disclaimer.

No amendments to the application are proposed by the present paper. Thus, claims 41-54 are currently pending for further action.

Prior Art:

Fletcher:

Claims 49-54 were rejected as anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 4,049,930 to Fletcher et al. ("Fletcher"). For at least the following reasons, this rejection is respectfully traversed.

Claim 49 recites:

> Apparatus for treating tinnitus comprising
> a sound generator for producing sound at a selected audio frequency, and amplitude, and
> a phase shift network for *shifting the phase of the produced sound at regular intervals, so that the sound is at one phase for a selected time period, and then shifts in phase for each of successive intervals thereafter.*

(Emphasis added).

In contrast, Fletcher does not teach or suggest the claimed "phase shift network for shifting the phase of the produced sound *at regular intervals*." (Emphasis added).

The Fletcher device does include a phase shift network (48, Fig. 2). However, this phase shift network (48) does not shift the phase of a produced sound at regular intervals, which, as disclosed by the Applicant, is effective to treat tinnitus.

Rather, the phase shift network (48) taught by Fletcher is for adjusting a reference signal to match a test signal used with a hearing aid. The phase shift network taught by Fletcher does not shift the phase of an audible, i.e., "produced sound" "at regular intervals, so that the sound is at one phase for a selected time period, and then shifts in phase for each of successive intervals thereafter."

To the contrary, as indicated above, the phase shift network (48) taught by Fletcher is merely for facilitating the comparison of a reference signal with a test signal when testing a hearing aid. Fletcher expressly teaches "phase shift network means for adjusting the phase of said reference signal relative to said test signal," "so that said reference signal and said test signal processed by a hearing aid without malfunctions will be identical in frequency, amplitude and phase." (Fletcher, claim 12).

According to Fletcher, "calibration adjustments are provided at the signal attenuator 42 to adjust the test signal input to the amplifier 12, by the potentiometer 46 to adjust the voltage level applied at the test signal input to the differential amplifier 47, and in the phase shift network 48 to adjust the phase of the reference signal relative to that of the test signal as processed by the hearing aid amplifier 12." (Fletcher, col. 6, lines 57-63).

Thus, Fletcher does not ever teach or suggest the claimed "phase shift network for shifting the phase *of the produced sound at regular intervals*." (Emphasis added). Fletcher has nothing to do with the claimed subject matter. "A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least these reasons, the rejection based on Fletcher of claim 49 and its dependent claims should be reconsidered and withdrawn.

Clark:

Claims 41-48 were rejected as anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 5,928,160 to Clark et al. ("Clark"). For at least the following reasons, this rejection is respectfully traversed.

Claim 41 recites:

> Apparatus for treating tinnitus sufferers comprising
> a portable record member,
> at least one audio recording track on said record member,
> a succession of signal recordings in said at least one recording track all at a predetermined audio frequency, *the recordings being in a phase shift sequence, such that the successive signal recordings are at successive phase shifts* and each occupies a predetermined time along the recording track, *the sum of the phase shifts occupying at least a half wavelength at said predetermined frequency.*

(Emphasis added).

In contrast, Clark does not teach or suggest an apparatus for treating tinnitus sufferers. This is important because the sequence of phase shifts in the claimed recordings has been demonstrated by Applicant to effectively treat tinnitus. Absent this objective, there is no

reasonable argument that the Clark reference would teach or suggest the claimed succession of signal recordings at a predetermined audio frequency having successive phase shifts summing at least half a wavelength of the predetermined frequency.

Clark describes a "home hearing test system and method." (Clark, title). The Clark home hearing test device includes the application of various audio signals at different volume levels over each of several different frequencies. However, Clark is entirely unconcerned with the phase of the audio signals and does not even mention the phase or phase shifting anywhere.

Nevertheless, the final Office Action argues that "Clark et al. disclose having a sequence of audible signals recorded on an audio track at the same frequency (Figs. 9a and 9b). Each signal is recorded for a predetermined amount of time and the time relation between each signal defines the phase shift of each consecutive signal." (Action of 3/7/07, p. 5). However, this is purely speculative and reads material into the Clark reference that is not there.

The phase of a successive recording relative to an earlier recording of an audio tone at the same frequency will be determined by the point in the wave cycle each recording begins. Consequently, if each of the recordings taught by Clark begin at the same point in the wave cycle, as one would assume, there will be no phase shift between successive recordings.

While one can imagine, as has the Examiner, that the successive recordings do have a phase shift, such is not taught or suggested by Clark. Rather, the Office Action attempts to read this idea into Clark with nothing in the reference itself to support such a position. Clark is absolutely silent on any phase shift between successive recordings, as evidenced by the failure of the final Office Action to actually cite any such teaching in the Clark reference.

In sum, Clark does not teach or suggest the claimed apparatus including at least one audio recording track that contains a succession of phase shifted signal recordings at a common predetermined frequency, where the sum of the phase shifts occupy at least a half wavelength of the predetermined frequency. Clark does not teach or suggest any of the subject matter of claim 41.

"A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least these reasons, the rejection based on Clark of claim 41 and its dependent claims should be reconsidered and withdrawn.

Claim 47 recites:

> Apparatus for treating tinnitus comprising
> first means for applying to a tinnitus sufferer a first sound at a selected frequency,
> second means for thereafter applying to the tinnitus sufferer a succession of additional sounds at the selected frequency, *each such additional sound being phase shifted with respect to a prior sound in the succession, wherein phases of said succession of sounds are incrementally spaced over at least a half wavelength at the selected frequency.*

(Emphasis added).

As demonstrated above, Clark utterly fails to teach or suggest means for applying sounds to a tinnitus sufferer where each additional sound is phase shifted with respect to a prior sound in the succession, where the phases of the successive sounds are incrementally spaced over at least a half wavelength of the selected frequency. Clark does not teach or suggest any such subject matter.

"A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least these reasons, the rejection based on Clark of claim 47 and its dependent claims should be reconsidered and withdrawn.

Conclusion:

For the foregoing reasons, the present application is thought to be clearly in condition for allowance. Accordingly, favorable reconsideration of the application in light of these remarks is courteously solicited. If any fees are owed in connection with this paper that have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 18-0013 in the name of Rader, Fishman & Grauer PLLC. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

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